

May 1, 2019

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation: *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Dear Secretary Dortch:

As Peerless Network, Inc. (“Peerless”) has explained in prior filings,¹ the Commission should adopt CenturyLink’s proposed Direct Connect Rule.² These filings demonstrate that there is tremendous industry support for the Commission’s adoption of this Rule because doing so will: (1) eliminate arbitrage schemes associated with terminating all or certain types of traffic to a terminating carrier’s end users, (2) promote efficient direct connects and routing of terminating traffic, (3) promote network redundancy necessary to decrease risk to public safety and exposure to network outages, (4) enhance competition and market efficiency, and (5) increase incentives for and remove barriers to facilities investment and the IP transition.³

¹ Letter from John Barnicle, President & CEO, Peerless *et al.*, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92 & 96-98, WC Docket Nos. 18-155, 18-156, 17-97, 10-90; CC Docket No. 01-92; CG Docket No. 17-59; PS Docket No. 11-60 (filed Mar. 19, 2019) (“Mar. 19, 2019 *Ex Parte* Letter Signed by 12 Entities”); *see* Comments of Peerless Network, Inc. and Affinity Network, Inc. d/b/a ANI Networks, WC Docket No. 18-155 (filed July 20, 2018) (“Peerless and ANI Comments”).

² *See* Letter from Timothy M. Boucher, Associate General Counsel, CenturyLink, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92 & 96-98, WC Docket Nos. 18-155, 10-90 & 07-135 (filed May 21, 2018) (“CenturyLink’s May 21, 2018 *Ex Parte*”) (requesting the Commission to adopt a rule confirming that all carriers have the duty to either (a) permit any requesting carrier to obtain direct network interconnection for the termination of access traffic or (b) bear responsibility for the costs of receiving traffic via indirect interconnection, if the carrier receiving a request for direct interconnection prefers to receive traffic indirectly (the “Direct Connect Rule” or “Rule”).

³ Mar. 19, 2019 *Ex Parte* Letter Signed by 12 Entities, at 3-5; Peerless and ANI Comments, at 2-8; Reply Comments of Peerless Network, Inc. and Affinity Network, Inc. d/b/a ANI Networks, WC Docket No. 18-155, at 3-4 (filed Aug. 3, 2018) (“Peerless and ANI Reply Comments”). With respect to arguments that oppose CenturyLink’s Direct Connect Rule, Peerless and others

In further support of CenturyLink's proposed Direct Connect Rule, Peerless submits this letter to: (a) provide additional record evidence of the significant economic benefits that will be realized by *end users and the competitive community at large* through the adoption of this Rule (rather than to those carriers that exploit their monopoly bottleneck to a terminating carrier's end users); and (b) further support the economic benefits that CenturyLink recently calculated and submitted in the record for its Direct Connect Rule.⁴

For instance, a quick recap of the sequence of events associated with Peerless's actual experience with T-Mobile and its disconnection of Peerless's direct connects *illuminates* the economic benefits to the competitive industry if the Commission were to adopt the Direct Connect Rule:

1. For several years (up until mid-December 2015), Peerless had direct connects with T-Mobile, which enabled Peerless to terminate all types of traffic regardless of jurisdiction to T-Mobile at no cost, *i.e.*, \$0.00 per Minute of Use ("MOU").⁵
2. Peerless was paying various facilities-based providers a grand total of approximately \$17,000 a month, which equates to \$204,000 annually, for the direct connects to T-Mobile.
3. At its peak, Peerless terminated over 1.1 billion MOUs on a monthly basis, which equates to 13.2 billion MOUs annually, over its direct connects to T-Mobile at no cost, *i.e.*, zero (\$0.00) per MOU.⁶
4. At that time, carriers (such as small rural carriers, VoIP providers, among others) that did not have direct connects to T-Mobile had a variety of competitive alternatives to terminate their traffic to T-Mobile. Given this competition, such

have demonstrated such opposing arguments can be rejected because they have no merit. *See, e.g., id.* at 4-19.

⁴ Letter from Joe Cavender, Vice President & Assistant General Counsel, Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2-3 (filed Apr. 30, 2019) ("CenturyLink's Apr. 30, 2019 *Ex Parte* Letter") (providing an analysis of the millions that CenturyLink would save and noting that the potential savings of adopting its proposed Rule across the industry would be "much larger").

⁵ Letter from John Barnicle, President and Chief Executive Officer, Peerless Network, Inc. and Philip Macres, Counsel for Peerless, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 2 (filed Mar. 15, 2018) ("Peerless's Mar. 15, 2018 *Ex Parte* Letter").

⁶ *Id.* at 2-3; Peerless and ANI Comments, at 9.

carriers paid an average rate of approximately \$0.0004 per MOU when they used other providers to route their traffic to T-Mobile.⁷

5. In mid-December 2015, which was after T-Mobile entered into its 2015 arrangement with Inteliquent,⁸ T-Mobile informed Peerless that the direct connects would be terminated unless Peerless agreed to limiting the traffic sent to “retail” traffic only.⁹ Because Peerless’s traffic is comprised of what T-Mobile deems to be comingled retail and wholesale traffic, which cannot easily be separated, T-Mobile effectively refused to allow Peerless to send any traffic to T-Mobile’s end users over Peerless’s then-existing direct connects.¹⁰
6. T-Mobile then disconnected Peerless’s direct connects (and those of other carriers) that were using the direct connect facilities to terminate both retail and wholesale traffic to T-Mobile.¹¹
7. As a result, T-Mobile forced Peerless (and other similarly situated carriers) to inefficiently route all their traffic terminating to T-Mobile end users either directly or indirectly through T-Mobile’s intermediate carrier partner, Inteliquent (which, by extension, has a bottleneck monopoly to T-Mobile’s end users since no other routes are available to send such comingled traffic, *i.e.*, only Inteliquent can route this traffic to T-Mobile).¹²

⁷ Peerless’s Mar. 15, 2018 *Ex Parte* Letter, at 3.

⁸ See Letter from Philip Macres, Principal, Klein Law Group, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at n.8 and Exhibit A (filed Dec. 20, 2017) (“Klein Law’s Dec. 20, 2017 *Ex Parte* Letter”) (attaching excerpts from Inteliquent’s 2015 agreement with T-Mobile that was filed with the SEC). The complete redacted version of the 2015 Agreement and the associated Schedules as filed on EDGAR are available at https://www.sec.gov/Archives/edgar/data/1292653/000156459015008822/ignt-ex101_201.htm.

⁹ Peerless’s Mar. 15, 2018 *Ex Parte* Letter, at 2; see also Klein Law’s Dec. 20, 2017 *Ex Parte* Letter, at Exhibit B at 6 (attaching CenturyLink’s informal complaint against T-Mobile that states “T-Mobile’s refusal to permit CenturyLink to establish direct connections unless it agreed to limit their use to retail traffic is, on its face, pure pretext” because T-Mobile is ultimately receiving the “same un-segregated mix of retail and wholesale traffic...it is just sent via the forced metering arrangements” from Inteliquent).

¹⁰ Peerless’s Mar. 15, 2018 *Ex Parte* Letter, at 2.

¹¹ *Id.*; see also Letter from Michel Singer Nelson, Counsel and Vice President of Regulatory and Public Policy, O1 Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, presentation handout at 1 & 3 (filed Jan. 8, 2018).

¹² Peerless’s Mar. 15, 2018 Letter, at 2. For a diagram, see Letter from Philip Macres, Counsel for Consolidated Communications Companies, Peerless Network, Inc., and West Telecom Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC

8. Due to this bottleneck monopoly, the cost to terminate traffic to T-Mobile via Inteliquent initially increased from an average rate of \$.0004 to \$.002 per MOU¹³ and—*just within the last 12 months, increased by another 25% to an average rate of \$.0025 per MOU*. This is an astonishing 525% increase to the average rate charged prior to December 2015, *with no end in sight for additional rate increases given Inteliquent’s ongoing exploitation of its bottleneck monopoly*.
9. If Peerless were terminating 1.1 billion MOUs on a monthly basis to T-Mobile today (which would now need to be rerouted through Inteliquent), Peerless’s annual cost to terminate such traffic would be at least **\$33 million** in MOU charges annually, whereas Peerless had previously incurred only **\$204,000** in charges annually to establish direct connect facilities with T-Mobile over which Peerless was able to terminate its mixed traffic to T-Mobile and its end users at no cost.

Thus, in this one example alone, the economic benefit to the competitive industry¹⁴ in adopting the Direct Connect Rule is at least \$32.8 million annually (\$33 million – \$204,000). Moreover, if the Direct Connect Rule were adopted, there would be more competitive alternatives to route traffic to T-Mobile, as Century astutely notes.¹⁵ This competition would, in turn, force per MOU rates back down to where they were prior to December 2015 or less.¹⁶ Knowing this, the historical MOU rates can be used to determine the economic benefit of adopting the Direct Connect Rule.

Docket No. 01-92, at Example 1 (diagram) (filed Dec. 4, 2017). Indeed, because Inteliquent currently remains the *exclusive* authorized provider of wholesale termination services to T-Mobile, *T-Mobile has transformed Inteliquent into a bottleneck monopoly provider* of combined wholesale and retail traffic to T-Mobile. Given this exclusivity, *T-Mobile has erected an unsurpassable “barrier to entry” for others carriers that seek terminate wholesale traffic directly to T-Mobile*. As CenturyLink explained, “the Commission cannot rely on competition under its current regulatory framework” to address these inefficiencies; “*it must reform its rules*” and establish a clear right to demand and obtain interconnects to wireless carriers to terminate all types of traffic, *i.e.*, both retail and wholesale traffic. *See CenturyLink’s Apr. 30, 2019 Ex Parte Letter*, at 3 (emphasis added).

¹³ Peerless’s Mar. 15, 2018 *Ex Parte* Letter, at 2-3.

¹⁴ This competitive community does not include Inteliquent or T-Mobile, as they have exploited T-Mobile’s monopoly bottleneck.

¹⁵ *See also CenturyLink’s Apr. 30, 2019 Ex Parte Letter*, at 3 (stating that “adopting the reforms CenturyLink proposes will mean that any intermediate provider can compete to offer service to [wireless carriers, among other] destinations.”).

¹⁶ *See also id.*, at 3-4 (explaining that “carriers will have an incentive to compete against each other for traffic, driving prices toward cost and improving service and efficiency.”).

As such, in this case alone, *the economic benefit would be at least a 525% decrease in per-MOU terminating rates for those carriers* (which notably includes many small rural carriers and VoIP providers, among others, that simply do not have the resources to directly connect with T-Mobile)¹⁷ that use an intermediate carrier to terminate traffic to T-Mobile. That is an absolutely enormous savings to the competitive industry – which savings would ultimately be realized by consumers in the form of reduced rates and/or network enhancements.¹⁸

As the record demonstrates, if the Commission adopts the Direct Connect Rule, it will stem the access arbitrage that has prompted the *massive monopolistic MOU rate increases* and produce other public interest benefits noted above. Moreover, the ability of the competitive carriers to use such savings in rate reductions to invest in network facilities and the IP transition (which the STIR/SHAKEN framework requires to stop unlawful robocalling and spoofing)¹⁹ will be dramatically improved—rather than radically undermined by those carriers that exploit their monopoly bottlenecks to their end users.

For these reasons, Peerless urges the Commission to adopt the Direct Connect Rule.

If you have any questions or would like additional information about the issues discussed in this letter, please let me know.

Sincerely,

/s/ John Barnicle

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/s/ Philip Macres

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¹⁷ See Peerless and ANI Reply Comments, at 9.

¹⁸ See also CenturyLink Apr. 30, 2019 *Ex Parte*, at 4 (by adopting CenturyLink’s proposed Direct Connect Rule, “the Commission will finally unleash competition, benefiting competitors and, more importantly benefitting the consumers that ultimately bear the costs of the current inefficient regime.”).

¹⁹ See also Mar. 19, 2019 *Ex Parte* Letter Signed by 12 Entities, at 7-8 & nn.23-24.

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